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Promotion and protection of all human rights, civil, Political, economic, social and cultural rights, Including the right to development

Written statement* submitted the Minbyun-Lawyers for a Democratic Society, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Human Rights Condition in the Republic of Korea

1. The human rights conditions in the Republic of Korea ("ROK") have been dramatically deteriorated over the last decade. In particular, the right to freedom of speech, peaceful assembly and association, the right to freedom of opinion and conscience, and the right to due process of law have been significantly infringed, for which Minbyun-Lawyers for a Democratic Society ("Minbyun") urges the Human rights Council to join in actions to improve the conditions.

Dissolution of a Political Party

2. On 19 December 2014 the Constitutional Court of ROK ("Court") ordered dissolution of the Unified Progressive Party ("UPP"), the second largest opposition party. The Court held that the UPP had sought to undermine the ROK's liberal democracy and were intent on pursuing the North Korea-style socialism. Ever since, the investigation agency has extended investigations over the individual members of the UPP for possible indictment.

3. However, the Court decision is in contravention to the guidelines on prohibition and dissolution of political parties and analogous measures of the Venice commission and is in violation of the right to freedom of association and speech. First, the UPP did not advocate the use of violence as a political means to overthrow the democratic constitutional order. Instead, the UPP promoted peaceful resolution between the Democratic People's Republic of Korea ("DPRK") and the ROK when incidents happened that posed a risk of undermining or undermined peace.

4. Second, the objectives or activities of the UPP cannot be identified with those of one or some of its members who, the government believes, are deemed to be a leading core or group of the UPP that was allegedly conspiring insurrection according to the Court decision. In fact, the UPP never authorized such activities. Plus, the Supreme Court of ROK held on 22 January 2015, two months after the Court ordered the dissolution of the UPP that a lawmaker Seok-gi LEE who the Court believes to be the head of the leading core is not guilty of conspiracy of insurrection to overthrow the government by forming an underground organization.

5. Third, the Court decision is not necessary in a democratic society. The trial for the Court-identified threat to democracy was at pending at the Supreme Court when the Court rendered the dissolution. There is no sufficient evidence that there was imminent threat or danger to the democratic constitutional order in the ROK. It means that there was less restrictive means to prevent such alleged danger, if any. In addition, the Court applied the principle of 'civil procedure' instead of that of 'criminal procedure' in determining the unconstitutionality of the UPP. It means that the government became less burdensome in proving the UPP's unconstitutionality. Also, less strict rules of evidence applied to the Court decision.

Infringement on Independence of Human Rights Lawyers

6. On 31 October 2014 the Prosecutors' Office submitted to the Korean Bar Association the application for commencement of the disciplinary action against seven Minbyun member lawyers. The government claimed in the applications that the lawyers violated a provision of professional ethics stipulated in Attorney-at-Law Act that prohibits the lawyers from damaging their dignity as attorney on and off duty when two lawyers are defending their clients and five lawyers participated in the assemblies and obstructed performance of the official duties.

7. First of all, however, one lawyer advised the client to plead the right to remain silent during the interrogation process in an effort to defend the best interest of a protestor who assaulted the police officer during the protest. Also, another lawyer advised to the client nothing related to the alleged fact that the lawyer advised the client a North Korean escapee to conceal the truth and make false statement. The truth is that the interrogation still focus almost solely on getting a confession from the accused and thus, the defense lawyer's advice to the accused to remain silence obstructs

the interrogation process to get that confession. Plus, the government has targeted the lawyer who has engaged in many high profile cases against fake espionage indictments as well as mistreatment that took place in the governmental detention facility particularly committing North Korean escapees.

8. Second, five lawyers were calling for the right of peaceful assembly to be guaranteed in front of the gate of the Deok-su Palace in Seoul since the police prohibited assemblies from taking place for no valid reasons despite the court decision and the recommendation of the National Human Rights Commission of Korea that allowed the assembly to be guaranteed in front of the gate. When the police officer interfered with the assembly by entering into the site in front of the gate and trying to argue with lawyers, the lawyers escorted the officer out of the site. At some point, the lawyers grabbed the shoulder and arms of the officer for which the prosecution claims that the lawyers violated the professional ethics. In fact, the site was used by the dismissed workers of Ssangyong Motors Company who wished to exercise their right to freedom of expression and the lawyers were hosting the assemblies in front of the gate of the Deok-su Palace in an effort to protect the right of such workers.

9. The Asian Human Rights Commission released the statement titled 'Reprisals against lawyers in a civilized society' to mention that "if the lawyers who advised the clients to exercise the right are subject to disciplinary actions by the Korean Bar Association, the practical effect would be to deprive the defendant of knowledge of his/her rights and to prevent him/her from exercising their rights at all."

10. There is serious concern that Minbyun lawyers are being targeted for their legitimate work as a lawyer. Acting in the best interest of their clients cannot be interpreted as infringement of professional ethics. This is in contravention to the ROK government's obligations under domestic and international law, particularly Article 16 of the United Nations Basic Principles on the Role of Lawyers, which states clearly that governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference and that they shall not suffer, or be threatened with, prosecution or administrative, economics or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Human Rights Abuse based on the National Security Law

11. The UN Human Rights Committee recommended in the first country review in 1999 that the ROK government abolish the National Security Act ("Act"). The UN Special Rapporteurs also recommended its abolishment. So did the Amnesty International.

12. However, the number of people charged for violations of the Act simply for expressing their opinions has rapidly increased since 2008. 46 people were charged with violations of the Act in 2008, 57 in 2009, 97 in 2010, 90 in 2011, 112 in 2012, and 79 as of September 2013 according to the 2014 parliamentary inspection data submitted by the Ministry of Justice.

13. Recently, the government has punished the citizens for posting messages on-line sympathized with North Korea and retweeting them. There has been a case report that the prosecution arrested for investigation and indicted a person who followed the DPRK government on Twitter and retweeted. The government has used the Act to restrict the freedom of expression on- and off-line and to suppress the dissenters against it.

14. Furthermore, there has been increasing number of the espionage cases on the grounds of the Act against the North Korean escapees that turned out to be fabricated by the National Intelligence Service and/or the prosecution. The Woo-sung YU case and the Kang-chul HONG case are cases in point. The appeals in relation to such cases are at pending as of now.

Recommendation

15. Minbyun expresses grave concern about the situation of the human rights in the ROK and urges:

- The Human Rights Council to recommend the ROK government to implement duties and obligations under the international human rights treaties to which it has been the state party; and

- The Special Rapporteurs on the rights to freedom of peaceful assembly and of association, on the promotion and the protection of the right to freedom of opinion and expression, on the situation of the human rights defenders, and on the independence of judges and lawyers to pay special attention to the developments of situations in relation to the human rights issues as stated hereinabove.